IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

MFA.No. 177 of 2000()

OPMV.184/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA
.....

APPELLANT - PETITIONER:

BABY A.P., S/O. PAULOSE,
THADATHIL HOUSE,
MANEED KARA, MANEED VILLAGE,
MUVATTUPUZHA TALUK.

BY ADV. SRI.BIJU ABRAHAM
SMTASHA B.MATHEW

RESPONDENTS - RESPONDENTS:
----

1. **KUNJAPPAN, S/O. KUTTAPPAN, KALIOLICKAL HOUSE, MAZHUVANNUR, IRAPURAM VILLAGE, KUNNATHUNADU TALUK.**

2. **BINU, S/O. KURUMBAN, MURICKUMKUZHIYIL HOUSE, MARANGATTUPILLY KARA, THIRUVANIYOOR VILLAGE, KANAYANNUR TALUK.**

3. **NATIONAL INSURANCE CO. LTD., KOLENCHERY BRANCH.**

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

==========

M.F.A. NO.177 OF 2000

==========

Dated this the 27th day of September, 2007

J U D G M E N T

Petitioner in O.P(MV) No.184 of 1997 on the file of the Motor Accidents Claims Tribunal, Muvattupuzha, is the appellant. Appeal is filed against the award passed by the Tribunal awarding a sum of Rs.6,500/- as compensation. Petitioner filed the petition claiming compensation against the driver, owner and Insurer of the offending vehicle. Petitioner was riding a motor cycle and along with him there was a pillion rider. The pillion rider filed O.P(MV) No.183 of 1997 impleading the driver, owner and Insurer of the Jeep as well as the appellant-petitioner and his Insurer. Both the petitions were tried together. Tribunal found that the petitioner also contributed negligence to the accident and found that he is 50% liable. So in the petition filed by him Tribunal awarded Rs.13,000/- as compensation, but allowed him to recover 50% of the said amount. Dissatisfied with the quantum of compensation awarded by the Tribunal, this appeal is filed.

2. Learned counsel appearing for the appellant has

strenuously argued that the finding that the petitioner is negligent is not based on any evidence and it is illegal. It is argued that a criminal case was registered against the driver of the Jeep alone and he was found guilty in that proceedings. It is argued that there was a curve in the place of occurrence and while negotiating the curve, the Jeep came to the wrong side and hit against the motor cycle. The Tribunal proceeded on the assumption that the road on the place of occurrence lies straight and that is the reason why the Tribunal found that the petitioner was also negligent. I do not think, in this proceedings, I can consider the arguments on merits. As I have already pointed out that the pillion rider filed a petition with the petitioner on the party array. Both the petitions were tried together. In that case also it was held that the petitioner was 50% negligent. That decision will operate as res judicata so far as the petitioner is concerned. So the argument of the counsel for the petitioner that the finding of the Tribunal that the petitioner is also negligent is liable to be set aside, cannot be accepted.

3. Tribunal awarded Rs.4,400/- towards treatment expenses. In the judgment itself it is noted that petitioner

produced documentary evidence to show that he had actually spent Rs.4,400/- towards treatment. Tribunal awarded Rs.6,500/- for pain and suffering. Considering all aspects of the matter, I am of the view that the Tribunal ought to have awarded Rs.1,600/- more as compensation towards medical expenses and Rs.2500/- more for pain and suffering. So the petitioner is entitled to get an additional compensation of Rs.4,100/-. Since the petitioner is also 50% negligent, he is entitled to get one half of the said amount, i.e., Rs.2,050/-.

In the result, the appeal is allowed in part. An award is passed in favour of the petitioner allowing him to recover and additional compensation of Rs.2,050/- with 6% interest from the date of petition till date of deposit. The Insurer is directed to deposit that amount also. On deposit, the petitioner can withdraw the entire amount.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

==========

M.F.A. 177 OF 2000

==========

J U D G M E N T

27TH SEPTEMBER, 2007